

REMARKS

Reconsideration of the present patent application is respectfully requested.

Claims 1-23 were filed with the original application. Claims 19-23 were subsequently withdrawn from consideration based on a Restriction Requirement and an election without traverse. Claims 19-23 are being canceled by this Amendment Response and this will, in effect, confirm the election without traverse.

As for the remaining claims, claims 1, 2, 7, 10, and 14-17 stand rejected under 35 U.S.C. §102(b) as being anticipated by Konikoff. Claims 8 and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Konikoff. Claims 1-6 and 9 stand rejected under 35 U.S.C. §102(b) as being anticipated by Goldfarb. Claims 12 and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Goldfarb. Claims 1, 10 and 11 stand rejected under 35 U.S.C. §102(b) as being anticipated by Swann. Additionally, the Examiner has noted that the word -- member -- needs to be added after the word "body" in claims 1, 2, 5-7, 10, 11, 15 and 16. Further, the drawing issue referenced by the Examiner appears to be created by the text of claim 11 and the drawings are otherwise acceptable.

In an effort to address all of the concerns and issues raised by the Examiner, claims 1, 4, 7, 10, 13, 15 and 16 have been amended and claims 2, 5, 6, 11, and 19-23 have been canceled. The cancellation of claim 11 should resolve the drawing issue. The addition of the word "member" now becomes moot for canceled claims 2, 5, 6, and 11. The remaining claims that have this issue, claims 1, 7, 10, 15 and 16, have been amended to add the word "member".

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Claim 1 has also been amended to further define the invention. Portions of claims 2, 5 and 6 have been blended into claim 1 as part of that amendment. As amended, claim 1 is believed to be novel and unobvious over the art of record. Claims 4 and 13 have been amended to change the claim dependency from claim 2 to claim 1. Finally, new dependent claims 24, 25, and 26 have been added. These three new claims do not result in any additional filing fee in view of the number of claims being canceled.

With regard to the rejections of claim 1 under 35 U.S.C. §102(b) based separately on Konikoff or on Goldfarb or on Swann, the following analysis provided for each cited reference should explain why and convince the Examiner that independent claim 1 is patentable. While the dependent claims are believed to be patentable on their own merit, they will be allowed upon the allowance of claim 1 and such action is solicited from the Examiner.

The Konikoff citation (US2,103,467) does not have the features of a plurality of at least three legs extending downwardly from the body away from the arms. One example of an advantage that is provided by the downwardly extending legs is that the base formed by the legs is more suitable for use with this apparatus than a flat base would be because the flat base on an uneven surface would lead to undesirable instabilities in the apparatus. Since the apparatus is for use in a balancing game, then such instability is very much undesirable. Furthermore, the provision of a plurality of downwardly extending legs provides an advantage in that the stability characteristics presented to the game players can be asymmetrical in nature. This advantage is probably best illustrated by the embodiment shown in FIG. 3 of the subject patent application where the legs define a tripod base which is inherently asymmetrical to the four outwardly extending

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arms. Referring to FIG. 3, sticks loaded on the arm at the 9 o'clock position are less likely to cause instabilities in the apparatus than sticks loaded at the 3 o'clock position. If by loading sticks onto the apparatus the center of gravity is shifted outside the triangular footprint defined by the tripod legs, the apparatus will topple. Hence, more weight is needed to shift the center of gravity outside the triangular footprint defined by the tripod on the 9 o'clock position than on the 3 o'clock position to topple the apparatus. This asymmetric stability characteristic is a subtle aspect of the apparatus which improves game play.

The Examiner has cited Goldfarb (US3,617,057) in which the legs and arms are part of the same member and therefore are integrally formed. The invention, as now claimed, is therefore novel over the Goldfarb citation. There is an advantage in having separate arm and leg members that are not integrally formed in that the disassembled apparatus can be provided with a more conventionally sized package. If all parts of the apparatus are capable of fitting within a standard sized box, then production costs are lowered, more so than if custom-made packaging needs to be provided to contain the apparatus. There is also the advantage of having more flexibility in, and control over, the different configurations of arms and legs that may be used. This is again important to get the desired stability characteristics. The device of Goldfarb is fundamentally different to that of the present invention, as now claimed, and could never operate in the desired way.

The Examiner has also cited Swann (US2,803,088) which relates to a construction toy and not an apparatus for use in playing a game involving supporting sticks. In the preferred embodiment of Swann, all of the arms and legs are shown to be identical and interchangeable and so the arms and legs are of the same size. This means that the outer

arm area and the footprint area will be substantially the same size. There is no disclosure of an outer arm area being greater than a footprint area in Swann. The invention, as now claimed, is therefore novel over the Swann citation. In the present invention there is an advantage in having the outer arm area greater than the footprint area because providing such an outer arm area to be greater than the footprint area increases the difficulty in balancing elongate stick members on such an apparatus, since not only is it necessary to carefully balance the sticks thereon, but to ensure that such balancing of the sticks does not cause a shift in the overall center of gravity of the apparatus which could result in the apparatus overbalancing. The greater the distance that such elongate sticks are placed from the vertical axis extending through the body, the greater the resulting moment will be created on the apparatus affecting its overall stability. The increased difficulty in balancing sticks on such an apparatus because of the chance of toppling caused by the outer arm area being greater than the footprint area is a characteristic of the apparatus which improves game play. In the case of Swann, however, because this relates to a constructional toy, there would be no motivation whatsoever to provide a structure with an outer arm area greater than a footprint area, with the attendant instability.

After giving these three citations proper consideration, and in view of the amendments made and the remarks offered, claims 1, 3, 4, 7-10, 12-18, and 24-26 are believed to be in condition for allowance and are requested to be passed to issue.

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